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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS QUESTIONS, INCLUDING ALTERNATIVE APPROACHES FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Letter dated 5 December 1996 from the Chargé d'affaires a.i. of the Permanent Mission of Yugoslavia to the United Nations addressed to the Secretary-General

I am writing to you in connection with the interim report on extrajudicial, summary or arbitrary executions prepared by Mr. Bacre Waly Ndiaye, Special Rapporteur of the Commission on Human Rights (A/51/457, annex) and have the honour to draw your attention to the following.

The Federal Republic of Yugoslavia has been resolute in its support for the efforts of the United Nations to prevent extrajudicial, summary or arbitrary executions and, to that end, supported the mandate of the Special Rapporteur of the Commission on Human Rights.

However, we consider that the report of the Special Rapporteur would have been much more balanced and accurate if equal attention had been devoted in the part dealing with events in the territory of the former Yugoslavia to all sides in the conflict.

Unfortunately, it is evident that the intention of the Special Rapporteur was to subsume under the crime of genocide the behaviour of only one side in Bosnia and Herzegovina, i.e., the Serbian side, while disregarding the behaviour of the other two sides, the Bosnian Croat and Muslim sides. Therefore, the report has signally failed to provide the right qualification of the massive violations of human rights and international humanitarian law, the victims of which have been the Serbs.

The Special Rapporteur has displayed a singular lack of criticism of Croatia and the Federation of Bosnia and Herzegovina as the report is silent about the mass and systematic crimes committed against the Serbs in Croatia and

the mass and systematic crimes that the Muslims and Croats committed against each other in the territory of the Federation.

In addition to turning a blind eye to these crimes, the Special Rapporteur has been very unselective in defining the notion of ethnic cleansing and in classifying it erroneously as a crime of genocide. His definition cannot be sustained by the norms of international law and, in the case at hand, by the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide. The out-of-context invocation of article 2 of the said Convention and the norms of international humanitarian law runs counter to the elementary rules of the interpretation of the Convention and the norms.

The attempt in paragraph 69 of the report to link ethnic cleansing to the said Article of the Convention is wrong and untenable. The observation of the Special Rapporteur in paragraph 68 that "a great reluctance of the international community to use the term 'genocide'" is not rooted, as the Special Rapporteur would like it, in the alleged "reluctance" but in the fact that such a position is contrary to international law, while the prevailing practice of certain political bodies and some United Nations Special Rapporteurs to invest genocide with arbitrary definitions has been politically motivated.

It serves no informative purpose at all that the Special Rapporteur provides no information as to which regions of the former Yugoslavia he visited in the period under review (1992-1996).

We consider particularly deficient the fact that, in describing the events in the territory of the former Yugoslavia, the Special Rapporteur had no recourse to the assessments contained in the relevant reports of the Secretary-General of the United Nations and the Special Rapporteur of the Commission on Human Rights on the situation on human rights in the former Yugoslavia. For the purpose of illustration, we point out that a series of our official documents (E/CN.4/1996/121-128 and 131), on crimes committed against the Serbs in Croatia and Bosnia and Herzegovina were circulated during the fifty-second session of the Commission on Human Rights. It is therefore no surprise that such a perfunctory approach and work have resulted in very biased judgements and inaccurate conclusions.

Ethnic cleansing is a crime against humanity and the authorities of the Federal Republic of Yugoslavia have been consistent in condemning it irrespective of the nationality of perpetrators and victims during the entire period of the conflict.

I should be grateful if you would have the present letter circulated as an official document of the General Assembly under agenda item 110 (b).

(Signed) Vladislav JOVANOVIC
Chargé d'affaires a.i.